Supreme Court, U.S.
FILED
FEB 15 2002
CLERK

(3)

No. 01-1006

In the Supreme Court of the United States

JAMES B. GARNET, SR.,
Petitioner,

v.

GENERAL MOTORS CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY BRIEF

MICHAEL D. ROSSI
Counsel of Record
GUARNIERI & SECREST, P.L.L.
151 EAST MARKET STREET
P.O. BOX 4270
WARREN, OH 44482
(330) 393-1584

Counsel for Petitioner

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

5/8

TABLE OF CONTENTS

REPLY ARGUMENT 1

CONCLUSION 3

REPLY ARGUMENT

Seriatim, Petitioner replies to certain new points raised in Respondent's Brief in Opposition.

STATEMENT OF THE CASE

I. FACTUAL HISTORY

At pp. 1-2 of its brief, Respondent claims that there is no record support for Petitioner's assertions that "GM has maintained fixed percentages of minorities and women ... in its apprentice selection process;" and that before hiring, "GM conducts a 'race' and 'sex' analysis" to ensure that its hirees "will include enough minorities and females to meet its perceived 'affirmative action' percentage requirements."

In fact, the percentages, aka "Track I Goals," were fixed at "15.5% minorities" and "12% women" minimums by the 1983 Conciliation Agreement that expired 12/31/88 [*Plott v. General Motors Corp.*, 71 F.3d 1190, Sec. I.A. (6th Cir. 1995); and there is nothing in the record to suggest that those percentages have changed any time since. For further discussion of this subject, see p. 1 of Petitioner's Reply Brief in companion case, *Yeager v. Genera/Motors Corp.*, No. 01-0990.

Respondent's denial of the numerical positioning of, or percentage requirements for minorities and women in its apprentice selection process is belied by its own Standard Apprentice Plan Selection Program Administrator's Manual [A-48 et seq. of the Joint Appendix below ("JA ")] wherein, at Chapter 10, entitled "Pre-Apprentice Training," we find the arithmetic trigger for "initiating pre-apprentice training:"

"...focus on identifying any deficiencies in the numbers of minority and/or female applicants who appear likely to be selected to apprenticeship... In cases where, potential deficiencies exist for either minority or female applicants...the Apprentice Committee should request the GM-UAW Skilled Trades and Apprentice Committee to authorize pre-apprentice training for such candidates." (Emphasis added) [JA A145-146].

When such "deficiencies" are found, then CPS, Respondent's third-party testing agency, is notified "of the number of Pre-Apprentice Workbooks needed." (Emphasis added) See Packard Electric "Apprentice Indenturing - June 1993" [JA A-235].

REASONS FOR [DENYING] THE WRIT

I. GARNET HAS [NOT] IDENTIFIED A FEDERAL QUESTION...TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT.

At p. 4 of its brief, Respondent argues that "the Sixth Circuit did not decide a federal question" since this action finds its genesis in state law (O.R.C. §4112.02), Au contraire, upon finding that:

> "The Ohio Supreme Court has determined that federal case law interpreting Title VII is generally applicable to cases involving alleged violations of §4112.02(A) (Authority omitted)" [Petition, Apx. A, p. 6a]

the Sixth Circuit in fact applied Title VII analysis to the issues below. Hence, the "federal question" here presented.

II. THE LOWER COURTS DID [NOT] ERR IN DECIDING THE MERITS OF THIS CASE.

Respondent's attempt to preclude this Court's review of the "potential application of *McDonnell Douglas* and its progeny" here, on "question not raised below" grounds, is myopic in nature. It's not that the *McDonnell Douglas* issue was not "raised" below. Indeed, it comprised the entirety of pp. 6-8 of Petitioner's "eight-page brief in the Sixth Circuit." Petitioner merely, albeit unsuccessfully argued that as one component of Title VII analysis, the *McDonnell-Douglas* model was simply inapplicable to the "direct evidence," facts and circumstances presented.*

CONCLUSION

For these additional reasons, the Court should grant the Petition.

MICHAEL D. ROSSI
Counsel of Record
GUARNIERI & SECREST, PL.L.
151 East Market Street
P.O. Box 4270
Warren, Ohio 44482
(330) 393-1584
Counsel for Petitioner

---

* The Sixth Circuit addressed that argument but, in mistaken reliance on *Plott*, *supra*, found that "the mere existence of PAP [sic] is not direct evidence of reverse discrimination." [Petition, Apx. A, pp. 6a-7a].